

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|--------------------------------|---|------------------------|
| ADELPHIA RECOVERY TRUST, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 05 Civ. 9050 (LMM) |
| |) | |
| BANK OF AMERICA, N.A., et al., |) | |
| |) | |
| Defendants. |) | |
| |) | |

**INVESTMENT BANKS' STATEMENT PURSUANT
TO LOCAL RULE 56.1 OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York and Rule 56 of the Federal Rules of Civil Procedure, the defendant Investment Banks¹ state the following material facts as to which there is no genuine issue to be tried.²

1. There is no evidence that the Investment Banks did anything beyond serving a limited role as underwriters on certain Adelphia securities offerings, and on occasion, certain of them made pitches to Adelphia management for additional investment banking business. Ex. 1 (Gelber 7/16/09 Tr. at 995:23-996:8); Ex. 2 (James Rigas 7/9/09 Tr. at 538:12-543:18); Ex. 3 (Michael Rigas 7/22/09 Tr. at 454:17-459:1)
2. Adelphia, a multi-billion dollar company, had access to professionals who plainly did owe Adelphia duties of care (e.g., Deloitte, its outside accountants, and Buchanan Ingersoll, its regular outside counsel). Ex. 4 (Venetis 3/11/09 Tr. at 81:10-23).
3. The Investment Banks had only limited interaction with Adelphia's senior management and no substantive interaction with Adelphia's Board. Ex. 5 (Coyle 3/24/09 Tr. at 98:17-21); Ex. 6 (Gelber 7/14/09 Tr. at 138:11-17, 139:24-140:2, 140:19-23; 214:2-5; 245:25-246:4); Ex. 4 (Venetis 3/11/09 Tr. at 266:9-12; 266:24-267:7); Ex. 7 (Venetis 3/12/09 Tr. at 456:12-16; 589:24-90:15); Ex. 8 (Venetis 4/15/09 Tr. at 627:7-20); Ex. 9 (Metros

¹ All capitalized terms not defined herein have the same meaning as in the accompanying Memorandum of Law in Support of the Investment Banks' Motion for Summary Judgment.

² Referenced exhibits are attached to the Declaration of Nora K. Abularach, dated November 18, 2009.

7/29/09 Tr. at 105:12-17, 261:6-15); Ex. 10 (Metros 7/30/09 Tr. at 732:6-15); Ex. 11 (Mulcahey 5/6/09 Tr. at 100:11-12, 105:16-20); Ex. 12 (Mulcahey 5/7/09 Tr. at 535:19–536:22); Ex. 13 (Kailbourne 10/1/09 Tr. at 549:3-13); Exs. 14-32 (ART's Responses and Objections to Interrogatories of the Investment Banks in which the ART fails to identify any statements made or documents provided to the Outside Directors by the Investment Banks).

4. There is no evidence of any written or oral agreement between the Investment Banks and Adelphia imposing a fiduciary or similar duty on the Investment Banks. Exs. 14-32 (ART's Responses and Objections to Interrogatories of the Investment Banks in which the ART offers only conclusory allegations and fails to identify any written or oral agreement between the Investment Banks and Adelphia imposing a fiduciary or similar duty on the Investment Banks).
5. There is no evidence that the Investment Banks either accepted or understood that they were entering into a fiduciary relationship with Adelphia. Exs. 14-32 (ART's Responses and Objections to Interrogatories of the Investment Banks in which the ART offers only conclusory allegations and fails to identify any specific facts supporting its contention that the various Investment Banks owed and breached a legal duty (fiduciary or otherwise) to Adelphia).
6. The Rigases were in possession of all information the ART alleges was concealed from the Outside Directors. Ex. 35 (SAC ¶¶ 805, 1007); Ex. 3 (Michael Rigas 7/22/09 Tr. at 673:5-12).

Dated: New York, New York
November 18, 2009

Respectfully submitted,

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